



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Roy Dye, et al. - Loan Origination Fees - Mortgage  
Brokers  
File: B-230703  
Date: March 23, 1990

### DIGEST

1. If an employee retains a mortgage broker who performs necessary administrative services that assist the ultimate lender in processing a loan, the employee may be reimbursed for the loan origination fees charged by both the broker and lender. The employee's total reimbursement, however, is limited to the customary fee charged by financial institutions in the area of the residence. Furthermore, the services of the broker must not be duplicated by the lender and must not increase the loan origination fee over what the lender would have charged in the absence of a broker having been involved.
2. The fact that an employee's loan obtained to purchase a residence at his new station includes an amount for prepaid finance charges would not affect the amount he may be reimbursed for a loan origination fee which is charged as a percentage of the total loan.

### DECISION

The Bonneville Power Administration (BPA) presents for our consideration five claims for loan origination fees charged employees incident to purchases of residences at a new duty station.<sup>1/</sup> Four of the claims involve loan origination fees paid to mortgage brokers. The fifth concerns inclusion of prepaid finance charges in the amount of a loan on which a loan origination fee is based.

<sup>1/</sup> The matter was presented by the Authorized Certifying Officer, Bonneville Power Administration, Portland, Oregon.

048136 / 140927

## BACKGROUND - BROKERS

Apparently, it is becoming common in the Pacific Northwest for home buyers to retain the services of a mortgage broker to obtain permanent financing for the purchase of a residence. Generally, the broker performs much of the administrative work necessary for preparing a loan application such as obtaining and reviewing credit reports and verifying employment. The broker then presents the application to a financial institution which makes the loan. The broker often receives part of the fees charged the employee for obtaining the financing that usually, but not always, are referred to as loan origination fees on the loan closing statement. The statement may show that both a broker and lender received a loan origination fee or that only one of them received a fee, although the broker and lender actually split the fee.

BPA presents claims from four employees for loan origination fees paid mortgage brokers, and BPA asks several questions in relation to these claims. The substance of the questions is answered in the following analysis and the individual claims are then addressed.

## ANALYSIS - BROKERS

Pursuant to 5 U.S.C. § 5724a(a)(4), and implementing regulations, an employee may be reimbursed expenses of purchasing a residence at the new duty station, including a loan origination fee. See Federal Travel Regulations (FTR), para. 2-6.2d(1), FPMR 101-7 (Supp. 4, August 23, 1982). The term "loan origination fee" as used in FTR, para. 2-6.2d(1), refers to the lender's fee for administrative expenses, including costs of originating the loan, processing the documents, and related work. See William K. Dickinson, B-229322, Dec. 8, 1988. Typically, the fee charged is based on a percentage of the total loan.

The regulations contemplate that ordinarily the loan origination fee is charged by the lender for administrative services it performs. However, if it is clear that these services were performed by another party who charges the loan origination fee, the employee may be reimbursed for the fee paid. See Edward Romoff, B-234969, Sept. 14, 1989, concerning the services rendered and fee charged by an escrow company. In such a case, however, it must be clear that the actual services rendered for which the fee is charged are the administrative services for which a loan origination fee is reimbursable. A charge for services such as merely finding a lending institution willing to make the loan or for commitment of the funds is considered a finance

charge which is not reimbursable. See e.g., Leslie E. Russell, Jr., B-217189, May 6, 1985.<sup>2/</sup> In addition it must be clear that the total fees are not greater than would have been charged without a broker being involved and the charge is not for services duplicated by the lending institution.

Where there is doubt as to what a broker's charges represent, reimbursement should be denied pending submission of substantiating evidence. The burden of proof is on the claimant, and the agency is not bound to accept as conclusive the broker's description of the services or a description on the settlement sheet. See James P. Moore, B-222899, Mar. 16, 1987.

The general rules applicable to reimbursement for loan origination fees would also apply when such fees are charged by brokers. That is the fee, or the combination of the broker's and the lending institution's fees, whichever is the case, may not exceed the customary fee charged by financial institutions in the locality where the residence is located. 5 U.S.C. § 5724a(4)(A) (1988); and FTR, para. 2-6.2(d)(1). See also Constance B. Chevalier, 66 Comp. Gen. 627, 629 (1987). A mere showing that a specific fee falls within a range of fees charged by financial institutions does not establish that fee as customary; it must be the dominant or prevailing fee. See James F. Trusley III, et al., B-219076, Nov. 25, 1983, and Gary A. Clark, B-213740, Feb. 15, 1984. In the absence of such a showing, we have held that it is appropriate to limit the employee's reimbursement to 1 percent of the loan amount. See Abbas M. Shakir, B-226876, Aug. 22, 1988.<sup>3/</sup>

---

<sup>2/</sup> See also B-173814, Oct. 21, 1971, in which a broker's entire fee was disallowed as a finance charge. That decision, however, was rendered at a time when the regulations did not authorize reimbursement of loan origination fees.

<sup>3/</sup> We note that for employees whose effective date of transfer is on or after October 1, 1987, FTR, para. 2-6.2d(1)(b) was amended to require employees who claim a loan origination fee of greater than 1 percent to show by clear and convincing evidence, including an itemization of the lender's administrative charges, that the fee does not include points, prepaid interest or a mortgage discount. See Wayne Pfeffer, B-234288, Feb. 8, 1990. This regulation does not apply to the claims in this case.

## INDIVIDUAL CLAIMS - USE OF BROKERS

### 1. Roy Dye

Mr. Dye transferred from Dallas, Oregon, to Vancouver, Washington, and purchased a new residence in September 1987. He paid a loan origination fee of 5-1/2 percent with 1 percent going to a mortgage broker and 4-1/2 percent to the financial institution. We are told that the customary charge in the locality of the residence purchased is 2 percent, and Mr. Dye was reimbursed this amount. We agree with the agency that in the absence of evidence establishing the customary charge to be higher than 2 percent, an additional amount may not be paid to Mr. Dye.

### 2. Cheri Sayer

Ms. Sayer transferred from Auburn, California, to Kent, Washington, and purchased a new residence in August 1985. She claimed a loan origination fee of 3.48 percent (\$1,900), and the agency only reimbursed her 2 percent. Ms. Sayer contested this and obtained a letter from her mortgage broker stating that it received a fee of \$1,229 for placing the loan, and the lender received a fee of \$671 for funding the loan. Ms. Sayer also obtained a letter from the local HUD office stating that a loan origination fee of 3 percent was usual and customary.

BPA asks us if the placement fee and funding fee are analogous to a loan origination fee, and, if so, whether Ms. Sayer should be reimbursed up to the 3 percent amount stated by HUD.

While the nature of a fee is not necessarily determined by its designation but rather by its purpose, the designations given these fees by the broker indicate they are in the nature of a finders fee and a commitment fee which, as discussed above, are not reimbursable. Therefore, without further evidence establishing that these fees were to reimburse the broker and lender for administrative costs of processing the loan, they cannot be considered loan origination fees. If Ms. Sayer can produce further information sufficient to satisfy BPA that the services for which these fees were charged were the type for which a loan origination fee is charged, we would have no objection to Ms. Sayer receiving reimbursement.

As to the amount of the fee, HUD's advice created a rebuttable presumption that 3 percent was customary. Apparently, BPA had generated other information indicating that the customary fee was 2 percent but is willing to accept the

HUD advice that 3 percent is now customary. We have no objection to that.

### 3. Dennis Myers

Mr. Myers transferred from Kent, Washington, to Wenatchel, Washington, and purchased a new residence in October 1986. He paid a 2-1/2 percent loan origination fee, with the broker receiving 1-1/2 percent and the lender receiving 1 percent. BPA reimbursed the claimant only 1 percent. Mr. Myers claims he should have been reimbursed the total 2-1/2 percent since this is the customary charge in the area of his residence. BPA, however, while only reimbursing him 1 percent, does indicate that the customary fee is 2 percent in the area.

In support of his claim, Mr. Myers has submitted a letter from the broker in which the broker states that it fully processed the loan application and then placed the loan with a lender who actually lent the money to Mr. Myers. According to the broker, the lender would have charged Mr. Myers a loan origination fee of 2-1/2 percent had Mr. Myers dealt directly with the lender. Instead the lender only charged 1 percent because much of the administrative work had been done by the broker. There appears to have been no duplication of effort by the broker and lender.

We would not object to Mr. Myers being reimbursed the customary loan origination fee of 2 percent.

### 4. Marlene Ciraulo

Ms. Ciraulo transferred from Oakland, California, to Seattle, Washington, and purchased a new residence in September 1987. She paid a 2 percent loan origination fee, with the broker receiving 1 percent and the lender receiving 1 percent. She was reimbursed for only 1 percent although BPA acknowledges that 2 percent is the customary loan origination fee in the Seattle area.

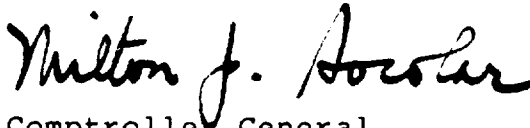
As in the Myers situation above, it appears that in this case there was no duplication of effort or increase in the loan origination fee because of a broker being involved in the processing of the loan. Both the broker and the lender performed distinct tasks and each charged 1 percent for its administrative costs which totaled the customary fee in the area.

Accordingly, Ms. Ciraulo may be reimbursed her total fee of 2 percent.

## LOAN INCLUDING PREPAID FINANCE CHARGES

BPA presents an additional question concerning whether it may reimburse an employee his full loan origination fee where a portion of the loan on which the fee was based was used to pay prepaid finance charges. Apparently, the question arises because the finance charges themselves are not reimbursable.

In the case in question Mr. David Morgan purchased a new residence and his loan origination fee was 1 percent of his total loan which included \$2,092 used to cover prepaid finance charges. Thus, part of the loan origination fee, \$20.92, is predicated on a prepaid finance charge. As explained previously, the regulations authorize reimbursement of loan origination fees, and these fees are usually computed based on a percentage of the loan amount. The regulations make no provision for excluding an amount of the fee which is derived from a portion of the loan used to pay finance charges. Therefore, the fact that part of the loan was used to pay these charges would not prevent reimbursement of the full amount of the loan origination fee. Accordingly, Mr. Morgan may be paid the total loan origination fee of 1 percent.



Acting Comptroller General  
of the United States